

REMARKS

Claims 1-8 and 10-68 were rejected in an Office Action dated February 20, 2007. Claims 1, 24, 41, 53, and 66 have been amended; claims 15, 23, 35, 52, and 56 have been canceled without prejudice or disclaimer to the subject matter contained therein. No new matter has been added by this amendment. Applicants respectfully request reconsideration of the present application in view of the following remarks.

Rejections under 35 USC §103

Claims 1-8 and 10-68 were rejected under 35 USC §103(a), as obvious over Maples (US 6,395,383, hereinafter "383") in view of Kershner et al. (US 4,824,916, hereinafter "916").

Teaching Away from the Proposed Combination

Applicants assert that Maples teaches away from the proposed combination of Maples '383 in view of Kershner '916. At col, 8, lines 12-17 of Maples '383 it is stated amines of the polyamine polymer may be of a wide variety, however it is understood that nitrogen containing chemical groups such as amides and imides would be excluded as they are not substantially basic. Where Kershner '916 is directed to polyamide and polyurea materials, one skilled in the art would be directed away from the combination of Maples '383 in view of Kershner '916. Thus, removal of the rejection to the claims is proper.

Teaching Away from the Proposed Modification

The Office states that Maples '383 is silent as to the use of aromatic sulfonated polymers and Kershner '916 fails to teach the instantly claimed sulfonic acid equivalent weight (Office Action at page 3). Moreover, the Office asserts that Maples '383 in view of Kershner '916 fails to teach a waterproof fabric laminate. Thus, Maples '383 in view of Kershner '916 fails to teach each element of Applicants' claimed invention.

With regard to the instantly claimed sulfonic acid equivalent weight, independent claims 1, 24, 41, 53, and 66 have been amended, to further distinguish Kershner '916 which clearly does not disclose or suggest the claimed sulfonic acid equivalent weight. Applicants assert

that the proposed modification of the sulfonic acid equivalent range of Kershner '916 is improper for the following reasons.

Applicants assert that Kershner '916 is not only outside of Applicants' claimed range, but that Kershner '916 also teaches away from the claimed range. At col. 6, lines 36-39, Kershner '916 states that the sulfonated polyamides and polyureas of Kershner '916 differ from the prior art polymers in their high degree of anionic substitution which renders the polymers water compatible unless crosslinked. Kershner '916 teaches maximizing sulfonation in polyamides and polyureas (cols. 6 and 7), forming water-soluble, water-dispersible polymers exhibiting desirable rheological properties (cols. 1 and 2) for use as thickeners, flocculants, and the like. Thus, Kershner '916 teaches away from lowering sulfonation to get to the claimed invention.

No Motivation to Combine References and No Reasonable Likelihood of Success

The Office maintains the rejection that it would have been obvious to one skilled in the art to have made the polymer of Kershner '916 with the instantly claimed sulfonic acid equivalent weight, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering optimal or workable ranges involve only routine skill in the art.

Applicants assert that this rejection is based on faulty logic where conditions of the instantly claimed invention are not disclosed in Kershner '916. Kershner does not disclose chemical protective coverings comprising a laminate having a layer of a sulfonated aromatic polymer and at least one additional layer capable of transmitting moisture vapor wherein the laminate has a permeation to 2CES of less than or equal to 100 ug/cm² over a 20 hour period, as claimed in claim 1. Nor does Kershner disclose a chemical protective article of apparel comprising a fabric laminate capable of transmitting water vapor, having at least one layer of apparel fabric laminated to a layer comprising at least one sulfonated aromatic polymer, wherein the laminate has a permeation to 2CES of less than or equal to 100 ug/cm² over a 20 hour period, as claimed in claim 24. Nor does Kershner disclose a method of reducing exposure of a person to chemical by interposing a chemical protective covering between a person and a noxious or harmful chemical, where the chemical protective covering comprises a fabric

laminate as claimed in claim 53. Moreover, Kershner does not disclose a chemical protective covering comprising a laminate of a layer comprising a sulfonated aromatic polymer and at least one additional layer wherein the laminate is capable of transmitting water vapor and has a permeation of PMF of less than or equal to 10ug/cm² over a 20 hour period.

Thus, Kershner does not disclose the claimed laminates having the claimed properties, and therefore, the general conditions of the claims are not disclosed. Where Maples does not address sulfonated aromatic polymers, no motivation is provided from Maples to modify the sulfonic acid equivalent weight. Applicants assert that the basis for the rejection does not stand and the rejection should be removed.

In the Final Office Action, the Office maintains the rejection of Maples in view of Kershner, and dismisses Applicants arguments that the numerous decisions and problems which may be faced require undue experimentation to modify Maples based on Kershner '916. The Office merely states that the issues set forth in Kershner are typical in the creation of a novel polymer, and maintains that to arrive at the instantly claimed sulfonic acid equivalent weight which is clearly outside that disclosed by Kershner, would only require routine experimentation. This response ignores Applicants' position that among the large number of technical manipulations set forth by Kershner to arrive at the various polymers taught therein, a skilled artisan attempting to solve the problem faced by Applicants would still encounter decisions and problems that would require modifications not taught in either Maples '383 or Kershner '916. "The motivation to modify the prior art must flow from some teaching in the art that suggests the desirability or incentive to make the modification needed to arrive at the claimed invention" (Alza Corp. v. Mylan Laboratories Inc., 391 F.3d 1365, 1372-1373 (Fed. Cir.)). Here, there is no disclosure which would suggest the proposed modification.

As previously stated, even with regard to the disclosed composition, Kershner '916 discloses difficulties which exist in attempting to practice (prepare) the crosslinked polymer. Kershner '916 reveals the following problems may exist and decisions which are indicated to be required in attempting to practice the disclosed technology, e.g.:

- improper salt concentration can cause undesirable swelling (7/47-49);

- improper salt concentration may only crosslink the surface (7/49-50);
- improper temperature (high temperature) can cause crosslinked systems to degrade (7/64-65);
- determination of pH (7/65-67);
- determination of cure time (7/65-67);
- improper diluent or solvent can deleteriously affect the polymer or crosslinker (8/14-16);
- decisions whether or not to use surfactants (8/16-17);
- decisions regarding the use of gas or neat crosslinkers (8/17-18);
- decisions regarding catalyst to induce crosslinking (8/19-20);
- decisions regarding irradiation to induce crosslinking (8/19-20); and
- decisions regarding whether crosslinking will be covalent or ionic (9/1-5).

In disclosing the numerous decisions and problems which may be faced in practicing the Kershner '916 technology, it is evident that undue experimentation would be required in attempting to practice the Kershner '916 compounds.

To modify Maples '383 in view of Kershner '916, as suggested in the Office Action, would likely require further decision-making and additional undue experimentation. Such experimentation, the multiplicity of steps required and problem solving indicated is not a matter of optimization. Such decisions and problems would require modifications not taught in either Maples '383 or Kershner '916. "The mere fact that the prior art could be so modified would not have made the modification obvious unless the prior art suggested the desirability or the modification" *In re Laskowski*, 10 USPQ2d 1397, 1399 (Fed. Cir. 1989). In the absence of any clear motivation provided by the Office, Applicants assert that the proposed combination and modification required to get to the claimed invention can only be achieved through impermissible hindsight reconstruction based on the teaching of Applicants' instant specification.

Moreover, in view of the difficulties and complex decision making indicated in practicing Kershner '916 independently, or in combination with Maples '383, the Office Action allegations of "general conditions" are respectfully traversed.

Accordingly, there is no expectation of success in practicing Maples '383 in view of Kershner '916 to achieve Applicants' invention as claimed.

In view of the above, Applicants respectfully assert that Maples '383 in view of Kershner '916 fails to teach, or suggest, all claimed elements of Applicants' claimed invention. Further, there is no expectation of success of practicing Applicants' claimed invention from the teachings of Maples '383 in view of Kershner '916. Hence, a *prima facie* case of obviousness under 35 U.S.C. §103(a) does not exist. Applicants' respectfully request the withdrawal of all rejections under 35 USC §103(a).

As discussed above, Applicants respectfully assert all pending claims are distinguished over Maples '383 in view of Kershner '916. Additionally, Applicants respectfully provide supplemental traverse and comments in response to the Office Action and in support of the patentability of the claims previously pending in order to clarify the record and for protection of Applicants' rights.

As previously stated by Applicants, Applicants respectfully assert that there is not sufficient motivation in either Maples '383 or Kershner '916 to combine the references in an attempt to achieve a "waterproof" article (Office Action, page 4). Additionally, Applicants do not recite "waterproof" in any independent claim and no specific claims are referenced under this basis of rejection.

Further, there is no evidence of any likelihood of success that Applicants' invention as claimed could be achieved from Maples '383 in view of Kershner '916.

Applicants also respectfully traverse the Office Action allegation in which a sulfonated aromatic polymer would "reside partially within the substrate" (Office Action, page 5). Evidence is not cited in the Office Action in support of this allegation.

Double Patenting

Claims 1-68 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being

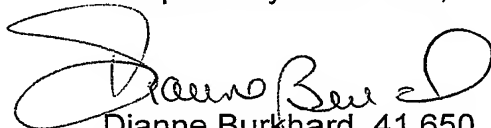
unpatentable over claims 1-16, 18-47, and 49-51 of copending Application No. 10/818,214.

In accordance with the previous Response, Applicants will consider filing a terminal disclaimer after successful prosecution of both applications.

Conclusion

For the foregoing reasons, the present invention as defined by the claims is neither taught nor suggested by any of the references of record. Accordingly, Applicants respectfully submit that these claims are now in form for allowance. If further questions remain, Applicants request that the Examiner telephone Applicants' undersigned representative before issuing a further Office Action.

Respectfully submitted,



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